

**AGREEMENT
BETWEEN
SHELBY COUNTY GOVERNMENT
AND
MEMPHIS CHAMBER FOUNDATION**

This Agreement, made and entered into this ____ of July , 2008 by and between Shelby County Government, party of the first part, herein referred to as "COUNTY", and Memphis Chamber Foundation, whose office is located at 22 North Front Street, Memphis, Tennessee 38103, party of the second part, herein referred to as "CHAMBER", for the purpose of facilitating economic development in Memphis and Shelby County.

WITNESSETH:

WHEREAS, The COUNTY desires to facilitate Economic Development in Memphis and Shelby County; and

WHEREAS, it is in the best interest of the COUNTY to implement the new economic development initiative of the Fast Forward Plan developed in cooperation with the City and County, Memphis Tomorrow, and the Memphis Regional Chamber entitled Memphis ED, and

WHEREAS, the COUNTY is authorized to enter into this Agreement; and

WHEREAS, the CHAMBER has the credentials, capabilities, experience, personnel, and abilities required to undertake the Scope of Services in the required time frame; and

WHEREAS, the CHAMBER is agreeable to undertake the professional services as outlined in the attached Scope of Services, hereinafter referred to as Attachment A-Memphis ED Plan, and under conditions and fees satisfactory to the COUNTY.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants herein set forth, it is agreed by and between the parties hereto as follows:

The Parties agree that the CHAMBER will act as the Fiscal Agent/Compliance Manager for overseeing contract funds provided by County for implementations of the Memphis Fast Forward plan and to conduct specific tasks in the Scope of Services as assigned by the Steering Committee referenced in said plan.

The Memphis Fast Forward Steering Committee shall be comprised of the following: City of Memphis, Mayor; City of Memphis, Chair or City Council or Designee; Shelby County, Mayor; Shelby County Chair of County Commission or Designee; Tennessee Commissioner of Economic and Community Development; Memphis Regional Chamber, Chair; Top Five Private Sector Investor Companies CEO's; leadership from other major Public and Private Investor Entities.

SECTION II. CHAMBER'S SERVICES

The services to be provided in connection with the Agreement will include those items listed in the Attachment A-Memphis ED Plan.

SECTION III. TIME OF BEGINNING AND COMPLETION

The term of this Contract will begin on the date of execution and shall extend through June 30, 2009 with the option to renew for two (2) one (1) year periods. The CHAMBER agrees to begin work on the Project within five (5) calendar days after receiving written authorization to proceed with the Project as authorized by the COUNTY through the Administrator of the Memphis and Shelby County Division of Planning and Development. The CHAMBER agrees to prosecute each of its assignments in an orderly and expeditious manner, on a schedule mutually agreed upon between the CHAMBER and the Division of Planning and Development.

SECTION IV. COUNTY FUNDING and REPORTING REQUIREMENTS

COMPENSATION

The CHAMBER acknowledges that compliance with this Agreement fulfills a portion of the Scope of Service required under that Agreement between County, City and CHAMBER, dated August 22, 2007, hereinafter referred to as Attachment B, and no other compensation is due for the services rendered.

COUNTY FUNDING

COUNTY acknowledges that has pledged a total of One Million Dollars (\$1,000,000) to the Memphis Fast Forward project for its fiscal year ending June 30, 2009 and, pending satisfactory progress on the services to be provided hereunder, agrees to fund this amount as indicated below.

CHAMBER shall submit quarterly progress reports indicating progress made on the Scope of Services along with quarterly invoices. COUNTY acknowledges that the invoices shall reflect the total of any previous payments. The COUNTY shall pay the amount, which is due and payable at the beginning of the quarter upon its approval of each invoice. The making of any partial payments by the COUNTY and the receipt thereof by the CHAMBER shall not constitute acceptance of the Project or of any portion thereof, and shall not lessen any obligation of the CHAMBER under this Agreement, including, but not limited to replacing or correcting work which does not conform to this Agreement, though the character of such work may not have been apparent or detected at the time such payment was made.

No compensation shall be due or payable to CHAMBER pursuant to this Contract for any CHAMBER'S Services performed by the CHAMBER in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CHAMBER to properly fulfill any of his obligations as set forth in this Contract.

FUNDING REQUIREMENTS

The following items must be met by the Chamber to ensure and to continue the County's pledge of One Million Dollars (\$1,000,000) to the Memphis Fast Forward Project:

- Memphis Chamber Foundation shall provide an outline of the structure of the decision making process with the recipient agencies pursuant to the proposals as outlined in the Memphis ED Plan.
- Distribution of the County's One Million Dollars (\$1,000,000.00) shall be on a two to one match with the private sector contributing two parts and the County contributing one part
- Chamber shall provide the County with a timeline and a detailed project list demonstrating how and when County's money will be spent
- No County funding shall be spent on any indirect or direct political activity
- County reserves the right to withdraw funding from any entity that the Commission may deem to not be in the best interest of public policy
- County funding will not be used to fund MPACT Memphis, nor shall any other Memphis ED Plan funds be used to the politics engaged by MPACT Memphis.
- Revise Section VI, Goal C, Strategy (9) of Attachment A under subsection entitled *Accountable Organizations* so that subsection includes both the Memphis Music Commission and the Memphis Music Foundation
- No County Funds shall be allocated to Beale Street Landing Project, Riverfront Development Corporation, or Riverfront Promenade Project.

REPORTING REQUIREMENTS

The CHAMBER shall prepare and submit quarterly reports of its activities, funded under this Agreement, to the Director, Division of Planning and Development and to Contracts Administration, as found in Section V, 23 Notice of this Agreement. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Agreement may be subject to audit by the Director of the Division of Administration and Finance. The COUNTY shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until this provision has been met.

SECTION V. MISCELLANEOUS PROVISIONS

The CHAMBER and COUNTY mutually agree as follows:

1. CONTROL

All services by the CHAMBER will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of same.

2. INDEPENDENT STATUS

Nothing in this Agreement shall be deemed to represent that the CHAMBER, or any of the CHAMBER'S employees or agents, are the agents, representatives, or employees of the COUNTY. The CHAMBER will be an independent contractor over the details and means for performing its obligations under this Agreement. Anything in this Agreement which may appear to give the COUNTY the right to direct the CHAMBER as to the details of the performance of its obligations under this Agreement or to exercise a measure of control over the CHAMBER is solely for purposes of compliance with local, state and federal regulations and means that the CHAMBER will follow the desires of the COUNTY only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the CHAMBER that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that the CHAMBER has been retained by the COUNTY to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the COUNTY by the CHAMBER for services performed shall be on the CHAMBER'S letterhead.

3. TERMINATION OR ABANDONMENT

It shall be cause for the immediate termination of this Agreement if, after its execution, COUNTY determines that either the CHAMBER or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting.

It shall cause for the immediate termination of this Agreement if, after its execution, COUNTY determines that the CHAMBER subcontracted, assigned, delegated, or transferred its rights, obligations or interests under this Agreement without the COUNTY'S consent or approval.

It shall be cause for the immediate termination of this Agreement if, after its execution, COUNTY determines that the CHAMBER filed bankruptcy, becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the CHAMBER assets.

The COUNTY may terminate the Agreement upon five (5) days written notice by the COUNTY or its authorized agent to the CHAMBER for the CHAMBER'S failure to provide the services specified under this Agreement. This Agreement may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the CHAMBER shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; however, the CHAMBER shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.

All work accomplished by the CHAMBER prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for services rendered.

Notwithstanding the above, the CHAMBER shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Agreement by the CHAMBER and the COUNTY may withhold any payments to the CHAMBER for the purpose of setoff until such time as the exact amount of damages due the COUNTY from the CHAMBER is determined.

4. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

Chamber shall provide subcontracts to MemphisED partners as specified by the Memphis Fast Forward Steering Committee. The Memphis Fast Forward Steering Committee shall determine services to be obtained from MemphisED Partners on an annual basis and, from time to time based upon quarterly progress reports, may amend services delegated to MemphisED Partners.

5. CONFLICT OF INTEREST

The CHAMBER covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The CHAMBER warrants that no part of the total agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or to the CHAMBER in connection with any work contemplated or performed relative to this Agreement.

6. COVENANT AGAINST CONTINGENT FEES

The CHAMBER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CHAMBER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CHAMBER any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

7. EMPLOYMENT OF COUNTY WORKERS

The CHAMBER will not engage, on a full or part-time, or other basis during the period of the Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the COUNTY.

8. ACCESS TO RECORDS

During all phases of the work and services to be provided under this Agreement, the CHAMBER agrees to permit duly authorized agents and employees of the COUNTY, to enter the CHAMBER'S offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CHAMBER will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Agreement and make such materials available at their offices at all reasonable times during the period of this Agreement and for three (3) years from the date of payment under this Agreement for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Agreement, or any authorized agents thereof; copies of said records to be furnished if requested.

9. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CHAMBER and the COUNTY will be referred to the COUNTY Contract Administrator or his/her duly authorized representative, whose decision regarding same will be final.

10. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

The CHAMBER shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages – including but not limited to Title VII and 42 USC 1983 prohibited acts – arising out of or resulting from any wrongful conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that

occur in connection with or in breach of this Agreement or in the performance of the duties hereunder, whether performed by the CHAMBER or its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Agreement.

The CHAMBER expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CHAMBER shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

The COUNTY has no obligation to provide legal counsel or defense to the CHAMBER or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this agreement against the CHAMBER as a result of or relating to obligations under this Agreement.

Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against the CHAMBER as a result of or relating to obligations under this Agreement. The CHAMBER shall immediately notify the COUNTY, c/o Shelby COUNTY Government, Contracts Administration as found in Section V,23 Notice of this Agreement, of any claim or suit made or filed against the CHAMBER or its subcontractors regarding any matter resulting from or relating to the CHAMBER'S obligations under this Agreement and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

11. GENERAL COMPLIANCE WITH LAWS

If required, the CHAMBER certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

The CHAMBER is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the CHAMBER agrees that all actions, whether sounding in Agreement or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby COUNTY, Tennessee, and in no other. In accordance herewith, the parties to this

Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

12. NONDISCRIMINATION

The CHAMBER hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the CHAMBER on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The CHAMBER shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

13. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties as to the Project.

14. AMENDMENT

This Agreement may be modified or amended, only if the amendment is made in writing and is signed by both parties. Such modification shall be effective only after receipt by CHAMBER and COUNTY'S notice to proceed.

15. SEVERABILITY

If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

16. WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement

or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

17. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

18. SUBJECT TO FUNDING

This Agreement is subject to annual appropriations of funds by COUNTY Government. In the event sufficient funds for this Agreement are not appropriated by the COUNTY Government for any of its fiscal period during the term hereof, then this Agreement will be terminated. In the event of such termination, the CHAMBER shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

19. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

20. OWNERSHIP AND DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CHAMBER, CHAMBER understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CHAMBER due to Services performed pursuant to this Agreement will immediately become the property of the COUNTY on behalf of Memphis and Shelby County Division of Planning Development, its member entities and as such are subject to being divulged as a public record in accordance with the laws of the State of Tennessee.

The CHAMBER agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Contract, whether or not the same is accepted or rejected by COUNTY, shall remain the property of COUNTY on behalf of the Memphis and Shelby County Division of Planning and Development and shall not be published by the CHAMBER or any other party without the express prior consent of the Memphis and Shelby County Division of Planning and Development. In implementing the foregoing, the CHAMBER hereby grants and assigns to COUNTY rights to use and publish any and all of such reports, studies, plans, models, drawings, specifications, and other information or data. The signing of this Agreement shall

constitute a transfer of ownership, and copyright of all documents from CHAMBER to COUNTY upon completion of the Project, excluding information previously developed by the CHAMBER.

All information owned, possessed or used by CHAMBER which is communicated to, learned, developed or otherwise acquired by the CHAMBER in the performance of the Services for COUNTY, which is not generally known to the public, shall be confidential and CHAMBER shall not, beginning on the date of first association or communication between COUNTY and CHAMBER and continuing through the term of this Contract and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for CHAMBER'S own benefit or the benefit of another, any such confidential unless required by law.

The CHAMBER shall obtain assurances similar to those contained in this subsection from persons, contractors and subcontractors retained by the CHAMBER. CHAMBER acknowledges and agrees that a breach by CHAMBER of the provisions of this section will cause COUNTY irreparable injury and damage. CHAMBER, therefore, expressly agrees that COUNTY shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Contract.

21. ORGANIZATION STATUS & AUTHORITY

Organizational Status. The CHAMBER represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

Power and Authority. The execution, delivery and performance of this Agreement by the CHAMBER has been duly authorized by all requisite action and will not violate any provision of law, any order of any court of other agency of government, the organizational documents of the CHAMBER, any provision of any indenture, agreement or other instrument to which the

CHAMBER is a party, or by which the CHAMBER'S respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

22. Living Wage

In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as

defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

23. INSURANCE REQUIREMENTS

The CHAMBER shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CHAMBER's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CHAMBER'S or subcontractor may be liable.

The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. The CHAMBER will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

1. Commercial General Liability – Minimum limit of \$1,000,000 per occurrence single limit for bodily injury and property damage. COUNTY shall be named as additional insured.
2. Worker's Compensation – The CHAMBER will provide Worker's Compensation Coverage for all eligible employees in accordance with the laws of the State of Tennessee.
3. Automobile Liability – Maximum limit of \$1,000,000 per occurrence on all owned, hired and non-owned autos. COUNTY to be named additional insured. All Policies will provide for 30 days written notice to COUNTY of cancellation or material change in coverage.

CHAMBER shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Purchasing Department
160 N. Main, Suite 550
Memphis, TN 38103

Upon termination or cancellation of insurance currently in effect under this Contract, the CHAMBER shall purchase an extended reporting endorsement and furnish evidence of same to the County.

24. Notice

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government
Chief Administrative Office
Attn: Mr. Jim Huntzicker
160 N. Main, Suite 850
Memphis, Tennessee 38103

With Copy To:

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

VENDOR: Memphis Chamber Foundation
Attn: _____
22 North Front Street
Memphis, TN 38103

IN WITNESS WHEREOF, the Parties hereto have affixed their hands and seals at Memphis and Shelby County, Tennessee, the day, month, and year first above written.

(This Agreement executed in multiples)

COUNTY OF SHELBY, TENNESSEE

MEMPHIS REGIONAL CHAMBER

By: _____
A C Wharton, Jr., Mayor

By: _____
John Moore

APPROVED AS TO LEGAL FORM EFFICACY AND PROPRIETY

By: _____
Contract Administrator and/or County Attorney

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for the said COUNTY, in the State aforesaid, duly commissioned and qualified. Personally appeared, _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and official seal of office this ____ day of _____, 2007.

Notary Public

My Commission Expires

